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Attorney for Plaintiff and Creditor
ILDIKO DIHEN

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:

SUSAN BERECKZY,

Debtor.

BK Case No: 22-50906

Adversary Case 23-5001

ADVERSARY PROCEEDING

ILDIKO DIHEN,

Plaintiff,

vs.

SUSAN BERECKZY,

Defendant

**ILDIKO DIHEN'S OPPOSITION TO
MOTION TO DISMISS, OR,
ALTERNATIVELY, FOR LEAVE TO
FILE THE ATTACHED SECOND
AMENDED COMPLAINT**

This motion is an attempted "Gotcha" – instead of meeting and conferring with counsel to obtain a solution or stipulation to remedy the issue, Defendant is trying to capitalize on a mistake, and in so doing, perpetuate a fraud on this court. Counsel's simple mistake, Bereckzy asserts, is reason to dismiss the complaint in its entirety, and enable her to avoid the serious allegations in this case – that she has secreted and failed to explain \$180,500 in income from this court, among other fraudulent activities.

1 The interests of justice dictate that the court should deny the motion. Granting the
2 motion would result in a gross miscarriage of justice and facilitate Defendant perpetrating a
3 fraud on this court. Not only would Ms. Dihen be seriously prejudiced by such an order, but so
4 too would all bankruptcy creditors and the US Trustee. As demonstrated in Exhibit 2, Ms.
5 Dihen has failed to disclose *at least* \$180,500 in income received in the two years prior to this
6 litigation. The motion fails to address the substance of this fraud in any manner whatsoever,
7 likely intentionally so. A compilation of the evidence showing a small portion of this \$180,500
8 is attached to the Yellin Declaration as Exhibit 2. Granting the motion would thus facilitate
9 Defendant perpetrating a fraud on this court.
10

11 To the extent the Court is inclined to grant the motion, Plaintiff asks the Court to do so
12 with leave to amend by simply entering (or allowing Plaintiff to file) the [Proposed] Second
13 Amended Complaint attached hereto as **Exhibit 1**. The Proposed SAC is identical to the FAC
14 with the exception of the deletion of Paragraph 8, which was inadvertently left in. (Plaintiff
15 still does not object or oppose Paragraph 8 from being removed and has removed it in the
16 PROPOSED SAC).
17

18 The court should allow the amendment Plaintiff seeks for at least three reasons. First,
19 leave is to be liberally granted in the interests of justice. And here, leave would indeed advance
20 the interests of justice not only for Plaintiff and the other creditors, but the Court itself.
21 Defendant must account for the serious allegations alleged in this case. Otherwise, she will be
22 getting away with fraud.
23

24 Second, Defendant does not contend – nor could she plausibly do so – that allowing
25 further amendment would be prejudicial. Discovery has not yet begun, and Defendant has not
26 filed an answer.
27
28

1 Third, Defendant Bereczky has not even asked for a dismissal with prejudice. Granting
2 Defendant a windfall in the form of dismissal with prejudice would be rewarding a fraud with a
3 windfall she has not even requested.

4 Accordingly, Plaintiff Bereczky asks that this Court deny the motion in its entirety. To
5 the extent the court is inclined to grant the motion, particularly in light of the inadvertent
6 inclusion of Paragraph 8 in the FAC, the Court should do so with leave, and enter the
7 [Proposed] SAC, ordering Plaintiff to file her answer within 21 days as required by the rules.
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11 Dated: May 15, 2023

AZIZ YELLIN LLP

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14 Sruli Yellin
15 Attorney for Plaintiff Ildiko Dihen
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